IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34664

STATE OF IDAHO,	)	**2010 Unpublished Opinion No. 369**
	)	
Plaintiff-Respondent,	)	**Filed: March 3, 2010**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
RODNEY DEAN PRECHT,	)	**THIS IS AN UNPUBLISHED**
	)	**OPINION AND SHALL NOT**
Defendant-Appellant.	)	**BE CITED AS AUTHORITY**
	)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copsey, District Judge.

Judgment of conviction for felony driving under the influence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent.

MELANSON, Judge

Rodney Dean Precht appeals from his judgment of conviction entered upon a conditional plea of guilty to operating a motor vehicle while under the influence of alcohol (two or more within five years). Specifically, Precht challenges the district court's order denying his motion to suppress. For the reasons set forth below, we affirm.

I.
FACTS AND PROCEDURE

The following facts were revealed through testimony and were set forth by the district court in denying Precht's motion to suppress. Police were dispatched to a residential neighborhood to investigate a report that a white male was behaving suspiciously. The report described the suspect walking around the front yard of a residence at night, knocking on the door, ringing the doorbell, and alarming residents. While investigating the report, officers discovered Precht sleeping in his car, partially blocking the driveway of the home where the

suspicious activity was reported. Precht's car matched the description of the car described in phone calls to police, and Precht matched the description of the person acting suspiciously.

Once the officers discovered Precht in his car and recognized that Precht and his vehicle matched the description provided, they approached the car and knocked on the driver's side window. Precht did not respond to the knocking right away and, once he did respond, he slurred his speech and was slow to answer the officers' questions. At that point, the officers asked Precht to "step on out" of the car and sit on the bumper. Upon further questioning and after the completion of field sobriety tests, Precht was arrested for operating a motor vehicle while under the influence of alcohol (DUI).

Precht filed a motion to suppress the evidence obtained as a result of his arrest, asserting that his detention by police was unlawful. After a hearing, the district court denied the motion. Precht conditionally pled guilty to DUI. I.C. §§ 18-8004, 18-8005(5). He appeals, challenging the district court's denial of his motion to suppress.

II.
STANDARD OF REVIEW

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact that are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. *State v. Valdez-Molina*, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

III.
ANALYSIS

Precht argues that the district court erred when it denied his motion to suppress the results of a breath test measuring his blood alcohol content. Specifically, Precht asserts that officers lacked a reasonable articulable suspicion that he was involved in criminal activity at the time he was initially detained by police. As a result, Precht claims that his detention was a violation of his Fourth Amendment right to be free from unlawful searches and seizures and that evidence seized as a result of his detention should be suppressed.

The Fourth Amendment to the United States Constitution, and its counterpart, Article I, Section 17 of the Idaho Constitution, guarantee the right of every citizen to be free from unreasonable searches and seizures. Under the Fourth Amendment, an investigative detention is a permissible seizure if it is based on specific articulable facts which justify suspicion that the detained person is, has been, or is about to be engaged in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 26 (1968); *State v. Sheldon*, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003). The quantity and quality of information necessary to create reasonable suspicion for such a "*Terry* stop" is less than that necessary to establish probable cause, *Alabama v. White*, 496 U.S. 325, 330 (1990); *State v. Bishop*, 146 Idaho 804, 811, 203 P.3d 1203, 1210 (2009), but must be more than a mere hunch or unparticularized suspicion. *Terry*, 392 U.S. at 27. The justification for an investigative detention is evaluated upon the totality of the circumstances then known to the officer. *Sheldon*, 139 Idaho at 983, 88 P.3d at 1223. Further, to meet the constitutional standard of reasonableness, an investigative detention must not only be justified by reasonable suspicion, but must also be reasonably related in scope to the circumstances that justified the stop in the first place. *Id.*

However, not all encounters between the police and citizens involve the seizure of a person. *Terry*, 392 U.S. at 19 n.16; *State v. Jordan*, 122 Idaho 771, 772, 839 P.2d 38, 39 (Ct. App. 1992). Only when an officer, by means of physical force or show of authority, restrains the liberty of a citizen may a court conclude that a seizure has occurred. *State v. Fry*, 122 Idaho 100, 102, 831 P.2d 942, 944 (Ct. App. 1991). A seizure does not occur simply because a police officer approaches an individual on the street or other public place by asking if the individual is willing to answer some questions or by putting forth questions if the individual is willing to listen. *Florida v. Bostick*, 501 U.S. 429, 434 (1991); *Florida v. Royer*, 460 U.S. 491, 497 (1983).

We first note that the initial contact between Precht and the police did not implicate the Fourth Amendment. The police simply approached Precht's car, knocked on the window to wake him up, and asked him, "What's going on?" This was entirely permissible. Precht argues that his initial detention by police (when the officers told him to exit his vehicle and sit on the bumper) was not justified because officers did not have a reasonable and articulable suspicion

that Precht had committed, or was about to commit, a crime.[1] However, Precht matched the general description given to dispatch of a white male driving a light blue, four-door vehicle. Also, his car was parked in the exact location of the reported suspicious activity. Precht argues that knocking on doors or walking around a neighborhood at night does not amount to criminal activity. However, such suspicious behavior could implicate the crimes of burglary or trespass. Further, Precht's behavior, once the officers attempted to question him while he was still inside his vehicle, indicated that he was intoxicated. Such behavior implicates another possible crime--the operation of a vehicle while under the influence of alcohol. As such, based on the totality of the circumstances, the officers had a reasonable and articulable suspicion that Precht was involved in criminal activity and further investigation was warranted. Therefore, a brief detention to investigate the suspicious circumstances was reasonable.

Once Precht was out of his car, officers asked him to identify himself and questioned Precht about why he was in the neighborhood, if he had been knocking on doors, and if he had been drinking and driving that evening. As such, Precht's limited detention was related in scope to the investigation of the suspicious behavior reported by residents and Precht's behavior after he was awakened by police. Therefore, Precht's encounter with police was a reasonable investigative detention under *Terry*, and did not violate the Fourth Amendment. As a result, Precht has failed to show that the district court erred in denying his motion to suppress.[2]

IV.

CONCLUSION

Reasonable suspicion existed to detain Precht to investigate a report of suspicious behavior. Therefore, we need not address whether the detention was justified on other grounds. As such, the district court did not err in denying Precht's motion to suppress. Accordingly, Precht's judgment of conviction for DUI is affirmed.

Chief Judge LANSING and Judge GUTIERREZ, **CONCUR.**

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[1] Precht does not dispute on appeal that his encounter with police was an investigative detention under *Terry*.

[2] Precht also argues that his detention could not be justified by an exercise of the officers' community caretaking function. Because we find that the detention was supported by a reasonable and articulable suspicion that Precht was involved in criminal activity, we decline to address this argument.